

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 96-27**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of T.C.A. § 67-6-330(a)(19) to an aerobic and fitness club.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department but applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] operates a health and fitness club located in [CITY], Tennessee. Members sign a contract with the club and pay membership fees to the club. One of the two (2) managers (both full time employees) of the Taxpayer is a Registered Nurse,

certified and registered in both the states of Tennessee and [STATE]. This employee administers health assessments including blood chemistry and urinalysis upon appropriate physician order.

The Club is presently opened in excess of 100 hours per week, and each member of the Club is entitled to participate each day the business is operating. The property on which the Club is located has in excess of 15,000 square feet used for physical fitness purposes.

At this time the following programs and/or activities are offered:

- (i) Health assessments, including blood chemistry and urinalysis are available upon written order of the doctor;
- (iii) Exercise equipment of all types, including mechanical, electrical and computerized along with dead weights;
- (iv) A jogging track
- (v) A full line of aerobics instruction, ranging from floor dance to step aerobics with several full time certified instructors.

At this time racquetball is not available, although the Taxpayer plans to build [NUMBER] racquetball courts in the near future.

The Taxpayer's business is not of a type listed under S.I.C. Codes 7992 or 7997.

By letter dated June 7, 1996, the Taxpayer submitted a request for exemption from sales tax pursuant to T.C.A. Section 67-6-330. On July 11, 1996, the Department's Taxpayer Services Division issued a letter stating "based upon your statements and under the provisions of T.C.A. Section 67-6-330(19), it does appear that the named establishment would be exempt from the sales and use tax on the membership dues or fees and charges made for the use of the establishment."

QUESTIONS

Based upon the foregoing, are the dues collected by the Taxpayer exempt from sales tax pursuant to T.C.A. § 67-6-330 (a)(19)?

RULINGS

Based upon the facts presented, dues paid to the Taxpayer are exempt pursuant to T.C.A. § 67-6-330 (a)(19).

ANALYSIS

T.C.A. § 67-6-212 provides in relevant part as follows:

(a) There is levied a tax at a rate equal to the rate of tax levied on the sale of tangible personal property at retail by the provisions of T.C.A. § 67-6-202 of the gross receipts or gross proceeds of each sale at retail of the following:

(1) Dues or fees to membership sports and recreation clubs, including free or complimentary dues or fees, when such are made in connection with a valuable contribution to any such establishment or organization, which shall have the value equivalent to the charge that would otherwise have been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

T.C.A. § 67-6-330(a)(19) provides an exemption to the tax imposed above as follows:

(19) Dues, membership application fees, admission fees, contributions or rental charges for equipment paid to any corporation or enterprise which offers on a regular, full-time basis services or facilities for the development or preservation of physical fitness through exercise or athletics; provided, that such corporation or enterprise claiming this exemption, in order to qualify for such exemption, must:

- (A) Have at least one (1) full-time employee certified in administering health assessments, or at least one (1) full-time employee licensed by the state that represents a medical and/or paramedical discipline;
- (B) Be open at least seventy (70) hours per week;
- (C) Permit participation by each member each day in operation;
- (D) Have at least fifteen thousand square feet (15,000 sq. ft.) in use for physical fitness purposes; and
- (E) Offer three (3) or more of the following programs and/or activities:
 - (i) Health assessments which include blood chemistry and urinalysis;
 - (ii) Racquetball;
 - (iii) Exercise equipment;
 - (iv) Track or swimming; and
 - (v) Aerobics

Before any corporation or enterprise can be exempted under this subdivision, the department of revenue shall, based upon information supplied by the person claiming such exemption, approve such exemption. The exemption provided in this subdivision shall not apply, however, to establishments listed under Industry 7992 and Industry 7997 of the

Standard Industrial Classification Index of 1987, prepared by the office of management and budget of the federal government.

Under the facts presented, the health and fitness club meets the requirements of T.C.A. § 67-6-330(a)(19), and therefore the dues paid to the health club for membership are exempt under the cited provision.

The letter dated July 11, 1996 from the Taxpayer Services Division of the Tennessee Department of Revenue constitutes approval of the Department to such exemption.

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APPROVED BY: Ruth E. Johnson

DATE: 9/23/96